

**Concurrence of Commissioner Grueneich:**

I voted to approve Commissioner Kennedy's report, "Broadband Deployment in California" (Report), in order to fulfill the requirement under Senate Bill (SB) 1563 to transmit this Report to the Legislature in a timely manner. I have voted to transmit the Report to the Legislature, even with the concerns I noted below, because I believe California should proceed immediately to establish a Broadband Task Force and move forward to make broadband deployment and access a priority. In addition, at my request, Commissioner Kennedy made several changes to the recommendation section of the Report from the draft she originally issued.

My remaining concerns are twofold:

First, I am mindful of the due process requirement that Commissioners not prejudge the outcome of ongoing Commission cases. Recommendation 9.12, "Remove Barriers to Bundling Services", includes specific recommendations on issues that are within the scope of the Commission's recently issued telecommunications pricing Order Instituting Rulemaking (OIR). Recommendation 9.12 does more than list issues that the Commission should address to encourage broadband deployment in the context of service tariffs. Recommendation 9.12 prejudices the outcome of the OIR by declaring what the Commission should do on these matters. Such prejudgment is inappropriate.

In response to my concern, Commissioner Kennedy has added a general caveat at the beginning of Chapter 9 stating that nothing in the Chapter is intended to prejudge matters pending in a current CPUC proceeding. However, the actual wording of Recommendation 9.12 has not changed and could give

R. 03-04-003  
D. 05-05-013

readers the impression that the Commission has reached conclusions in matters pending before us. I have not reached the conclusions listed and will not do so until the record in the OIR is developed and I have reviewed it. I advocated the more prudent approach of addressing the issues in the OIR in a neutral fashion, to avoid any question regarding prejudgment.

My second area of concern is more global in nature. I am concerned that the report does not fully respond to the Legislature's directive in SB 1563 to develop a plan "for encouraging the widespread use of advanced communications infrastructure." The Commission is required to identify factors preventing "ubiquitous availability and use of advanced communications services" and to develop strategies for addressing these factors, while encouraging adequate investment in advanced communications infrastructure that serves the public good.

SB 1563 required the Commission to focus specifically on the barriers to broadband deployment in "underserved communities" -- low income, rural, non-English speaking, and disabled communities -- and to develop recommendations targeted at overcoming barriers unique to those communities. The Report contains a very limited discussion in this area. For example, Chapter 6 of the report, "Barriers", contains only a half-page discussion on "Broadband Challenges to the Disabled Community" and a little more than a page of discussion on "Challenges to Access in Rural Communities". The Chapter has no discussion at all regarding barriers to broadband deployment in low income or non-English speaking communities. Chapter 9, Recommendations, does include some recommendations regarding the disabled and low income communities and Universal Service generally. Again, there are no

R. 03-04-003  
D. 05-05-013

recommendations addressing non-English speakers. The Commission should have gone further in order to satisfy both the directives of SB 1563 and our constitutional mandate to protect consumers, particularly those who do not have the resources to appear before this Commission.

In pursuing the important goal of encouraging technological innovation, we must vigorously pursue means to make the new technology available to underserved communities. This Commission needs to gather facts on the status of competition in those underserved communities, to identify the specific barriers to the reach of broadband service to those communities, and to then explore ways to address those barriers. The Report as written does not provide an overall plan that addresses underserved communities.

I advocate further review of this issue by the Commission and I am prepared to work with my fellow Commissioners and staff to focus specifically on steps that will ensure that the low income, rural, non-English speaking, and disabled communities are not left behind as telecommunications technology advances.

Dated May 5, 2005, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich  
Commissioner